

### **REMARKS/ARGUMENTS**

#### **STATUS OF THE CLAIMS**

The Office Action dated May 26, 2004 has been received and its contents carefully considered. Claims 1-20 are pending. Claims 1-20 have been rejected. Claims 1, 6, 11-13, 16, 19 and 20. Claims 2 and 10 have been cancelled. New claim 21 has been added.

Reconsideration and withdrawal of the outstanding rejections are requested in view of the following remarks.

#### **PRIORITY**

This application claims priority under 35 U.S.C. §119(e) based upon a previously filed application. The specification has been amended accordingly to reflect the aforementioned priority.

#### **DRAWINGS**

The drawings were objected to for failing to comply with 37 C.F.R. §1.84(p)(5). The specification has been amended to include element 28 as reflected in FIG. 2. FIG. 3 has been amended to include element 78 as described on page 13, paragraph 31. It is believed that the drawings are in compliance.

## **SPECIFICATION**

The disclosure was objected because of informalities. The specification has been amended to correct the aforementioned informalities. It is believed that the specification is in compliance.

## **CLAIM OBJECTIONS**

Claims 1-20 were objected to because of informalities. Claims 1, 6, 16 and 20 have been amended accordingly. It is believed that claims 1-20 are in compliance.

## **CLAIM REJECTIONS – 35 U.S.C. § 112**

Claim 12 was rejected under 35 U.S.C. §112, first paragraph. The Examiner states that “the claim language appears to disclose a step in which a server attempts to operate as a monitor server, discovers that the monitor server position is filled, and thereafter performs the functions of a primary server.” The Examiner further states that such a step is not disclosed in the specification and is outside the scope of enablement.

It is respectfully submitted that the Examiner’s assessment is incorrect. Beginning on page 11, paragraph 28, Applicant’s specification discloses that if “a response is not received in step 22, it can be assumed that a monitor server is already operational and the servers’ network address is reset to the primary server address (step 24), the server that was previously acting as the primary server is rebooted (step 26), and the server that was previously acted as the monitor server will attempt to operate as the primary server as in FIG. 1.” Hence, it is believed that the

claim language of claim 12 is fully enabled by Applicant's specification and is claimed accordingly.

Claims 1-2 and 19 were rejected under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention. Claim 1 has been amended to recite "a step of booting the first server" as suggested by the Examiner. Claim 19 has been amended to clarify the claim language including the language directed to a "computer processor".

### **CLAIM REJECTIONS – 35 U.S.C. § 102**

Claims 1-7, 9-11 and 13-20 were rejected under 35 U.S.C. §102(e) as being anticipated by *Coile, et al.* (U.S. Patent No. 6,108,300). Without conceding the propriety of the rejection, independent claims 1, 13 and 20 have been amended. It is respectfully submitted that *Coile, et al.* does not teach, *inter alia*, a method for providing backup server support comprising "in conjunction with the booting of the first server: signaling, using a second signal, the monitor server address; and monitoring for a response to the second signal within a second time period" in combination with the additionally claimed features as recited in claim 1. It is also respectfully submitted that *Coile, et al.* do not teach, *inter alia*, a system for operating redundant computers comprising "in conjunction with the booting of the first server: signaling, using a second signal, the monitor server address; and monitoring for a response to the second signal within a second time period" in combination with the additionally claimed features as recited in claim 13 and similarly in claim 20.

*Coile, et al.* teach a method for transferring a network function from a primary network device to a backup network device. The scope of *Coile, et al.*'s disclosure is limited as it pertains to the present invention. For example, the Examiner states that "the language in claim

16 of *Coile, et al.* line 3-5 discloses that the primary network device can become active if the primary network device is reset.” However, *Coile, et al.* is silent with regards to teaching additional steps in conjunction with booting of the server, including, for example, signaling, using a second signal, the monitor server address, and monitoring for a response to the second signal within a second time period as recited in claims 1, 13 and 20 of the present invention.

For anticipation under 35 U.S.C. §102 the reference must teach every aspect of the claimed invention either explicitly or impliedly. Any feature not directly taught must be inherently present (M.P.E.P. 706.02). Since each and every element, as set forth in the claim, is not found either expressly or inherently described as required by the M.P.E.P, *Coile, et al.* cannot be said to anticipate the present invention as claimed. Hence, withdrawal of the rejection is respectfully requested.

Claim 2 has been cancelled. However, the subject matter thereof has been incorporated into the claimed subject matter of newly added claim 21. The Examiner stated that “in reference to FIG. 9, elements 916 and 922 discloses a first and second server including a first server memory and a second server memory respectively.” However, upon further review of *Coile, et al.*, FIG. 9 only depicts a typical computer-based system which may be used a failover or hot standby network device (see *Coile, et al.*, column 12, lines 54-55). Additionally, while FIG. 3 of *Coile, et al.* depicts a block diagram further illustrating the communication between a primary network device 300 and a second network device 310, *Coile, et al.* fails to teach that the first server includes a first server memory in addition to the second server including a second server memory as recited in claim 21 of the present application. Thus, *Coile, et al.* cannot anticipate the claimed invention since each and every element as set forth in the claim is not found either expressly inherently described by the M.P.E.P.

Claims 3-7, 9, and 11 depend ultimately from independent claim 1 and are patentable over the cited prior art for at least the same reasons as is claim 1.

Claim 10 has been cancelled.

Claims 14-19 depend from independent claim 13 and are patentable over the cited prior art for at least the same reasons as is claim 13.

### CLAIM REJECTIONS – 35 U.S.C. § 103(a)

Claim 8 was rejected under 35 U.S.C. §103(a) as being unpatentable over *Coile, et al.* in view of *Midgeley, et al.* (U.S. Patent No. 5,592,611). Claim 8 depends from independent claim 1. *Coile, et al.* fails to teach each and every element as set forth in claim as required by the M.P.E.P. as outlined above. *Midgeley, et al.* does not cure the deficiencies of *Coile, et al.* because, it, too, fails to teach in conjunction with booting of the server, including, for example, signaling, using a second signal, the monitor server address, and monitoring for a response to the second signal within a second time period as recited in claim 1 of the present invention.

In accordance with the M.P.E.P. §2143.03, to establish a *prima facie* case of obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art. *In re: Royka, 490 F.2d 981, 180 USPQ 580 (CCPA 1974)*. “All words in a claim must be considered in judging the patentability of that claim against the prior art.” *In re: Wilson, 424 F.2d 1382, 1385, 165 USPQ 494 196 (CCPA 1970)*. Therefore, since the prior art lacks all the claimed features, *Coile, et al.*, alone or in combination with *Midgeley, et al.*, cannot be said to teach or suggest the present invention as claimed. Hence, withdrawal of the rejections is respectfully requested.

Claim 12 was rejected under 35 U.S.C. §103(a) as being unpatentable over *Coile, et al.* in view of *Li, et al.* (U.S. Patent No. 5,473,599). Claim 12 depends ultimately from independent claim 1. *Coile, et al.* fails to teach each and every element as set forth in claim 1 as required by the M.P.E.P. as outlined above. *Li* does not cure the deficiencies of *Coile, et al.* because, it, too,

does not teach booting the first server, signaling, using a second signal, the monitor server address, and monitoring for a response to the second signal within a second time period as recited in claim 1 of the present invention. Therefore, since the prior art lacks all the claimed features, *Coile, et al.*, alone, or in combination with *Li, et al.* cannot be said to teach or suggest the present invention as claimed. Hence, withdrawal of the rejection is respectfully requested.


### CONCLUSION

In view of the foregoing, it is respectfully submitted that the application is in condition for allowance. If it is believed that the application is not in condition for allowance the Examiner is requested to contact the undersigned attorney if it is believed that such contact will expedite the prosecution of the application.

In the event this paper is not timely filed, Applicant petitions for an appropriate extension of time. Please charge any fee deficiencies or credit any overpayments to Deposit Account No. 50-2036.

Respectfully submitted,

BAKER & HOSTETLER LLP



Marc W. Butler  
Reg. No. 50,219

Date: August 26, 2004  
Washington Square, Suite 1100  
1050 Connecticut Avenue, N.W.  
Washington, D.C. 20036-5304  
Telephone: 202-861-1500  
Facsimile: 202-861-1783